Filed 2/14/05 Marriage of Rajappan CA6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re the Marriage of BALA M. RAJAPPAN and SUJATA GAHTE-RAJAPPAN.	H026974 (Santa Clara County Super. Ct. No. FL094102)
BALA M. RAJAPPAN, Appellant, v. SUJATA GAHTE-RAJAPPAN, Respondent.	

In this dissolution action, the husband appeals from the judgment entered after trial on a bifurcated property issue. The challenged judgment awards the marital community a portion of the amount by which the husband's business increased in value during the marriage. He contends that the trial court abused its discretion in rendering that judgment. We disagree and affirm the judgment.

BACKGROUND

The parties are appellant husband, Bala Rajappan ("Bala"), and respondent wife, Sujata Gahte-Rajappan ("Sujata").[1]

The parties were married in February 1998. They separated in early July 2000. Bala petitioned for dissolution of the marriage later that month. In February 2001, a status-only judgment of dissolution was entered.

In March 2002, the parties stipulated to the appointment of retired Judge James Stewart as temporary judge, to decide "all issues" in the dissolution matter. Judge Stewart conducted a bifurcated trial on the issue of the community's interest in Bala's company, Rajappan & Meyer, Consulting Engineers, Inc. ("R&M"). That issue was tried over four court days between mid-July and mid-October 2003.

At trial, each party offered documentary and testimonial evidence. Much of the evidence addressed Bala's role in the business. In addition, each side offered evidence from forensic accounting experts concerning the value of R&M's growth during the marriage. Bala presented accountant James Butera, who submitted a report and testified. Sujata presented accountant and appraiser Stephen Reiss, who likewise offered both his report and his testimony. Each party also submitted trial briefs and oral argument. At the close of evidence and argument, the court took the issue under submission.

In November 2003, the trial court issued a detailed statement of decision. The court first summarized the applicable legal principles, focusing on the two accepted

[1] We refer to the parties by their first names for the sake of clarity, not out of disrespect. (See *In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 280, fn. 1.) Notwithstanding the caption, we are aware that the trial court restored respondent's former name, Sujata Ghanekar.

approaches for apportioning business growth between separate and community interests, *Pereira* and *Van Camp*.[2]

The court then made extensive findings of fact based on the evidence presented at trial. Among its factual determinations were these: (1) "Bala Rajappan and Keith Meyer are the sole shareholders of the corporation. Bala has a 51% interest and Keith has a 49% interest because such a ratio made the company eligible for minority contracts." (2) "Keith has vastly greater experience in the business of consulting engineering than Bala." "Keith makes all of the presentations for R&M when it seeks a contract" and he is the firm's "sole rainmaker." "Keith Meyer is also the senior project manager for 80% of the contracts obtained by R&M." (3) "This business is run like a two person partnership, and each partner contributes to the growth and success of the firm." Bala's efforts contributed to R&M's growth because he "ran the business in house day to day, and in the field he provided the quality assurance that brought return business and enhanced goodwill."

Based on its findings, the court concluded that "substantial justice and equity" would be accomplished by using a blended approach to apportionment. The court therefore apportioned the growth in the business "using a *Van Camp* approach for 66.65% of the apportionment, and a *Pereira* approach for 33.35% of the apportionment." The court acknowledged the parties' stipulation "that under a purely *Van Camp* approach, there would be no community property to divide between the parties. It was more than entirely consumed by Bala's salary and distribution of profits."

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[2] See *Pereira v. Pereira* (1909) 156 Cal. 1, 7-8 (*Pereira*); *Van Camp v. Van Camp* (1921) 53 Cal.App. 17, 27-28 (*Van Camp*). The two apportionment formulas derived from these cases are discussed more thoroughly below. In brief, under the *Pereira* approach, the court calculates a fair return on the spouse's separate property investment in the business, with the remainder belonging to the community. With the *Van Camp* method, the court values the spouse's community property efforts devoted to the business, with the remainder constituting separate property income.

In valuing the apportioned interests, the court adopted the calculations of Sujata's expert, Stephen Reiss. Based on its chosen apportionment method and valuation calculations, the court set the community interest in the business growth during marriage at $1,191,654, with each spouse's share thus amounting to $595,827. The court reserved jurisdiction over the community's share of a reimbursement obligation owed by R&M.

On December 8, 2003, the court entered judgment consistent with its statement of decision, thus ordering Bala to pay Sujata the sum of $595,827.

We granted Bala's motion to appeal the decision on the bifurcated issue. (See Cal. Rules of Court, rule 5.180, subd. (f).)

CONTENTIONS

Bala makes two claims of error on appeal: (1) The trial court erred in apportioning any business value to the community. (2) Even if apportionment was proper, the trial court erred in calculating the value of the community's interest.

Sujata disputes those claims. She first asserts that Bala's contentions should be deemed waived as a result of his violations of the rules on appeal. She also refutes his claims on the merits.

DISCUSSION

At the threshold, we consider and reject Sujata's waiver argument. We then address Bala's arguments on the merits, first describing the standard of review, then summarizing the applicable legal principles, and finally applying those principles to the case before us.

I. Rule Violations

Sujata accuses Bala of violating the rules of court. Specifically, she asserts, he disregarded his duty to accurately summarize the material facts on appeal. (See Cal. Rules of Court, rule 14, subd. (a)(2)(C). See also, e.g., *City of Lincoln v. Barringer*

(2002) 102 Cal.App.4th 1211, 1239; *Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 29-30; *County of Solano v. Vallejo Redevelopment Agency* (1999) 75 Cal.App.4th 1262, 1274.) She argues that Bala's opening brief "presents a largely one-sided statement of facts." As Sujata correctly observes, the parties to an appeal " 'are required to set forth in their brief *all* the material evidence on the point and *not merely their own evidence*." (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881. Accord, *Brockey v. Moore* (2003) 107 Cal.App.4th 86, 96-97.) Sujata asks us to punish Bala's rule violation by deeming his appellate arguments waived. Bala does not respond to this point in his reply brief.

Appellate courts have broad discretion in dealing with infractions of the rules on appeal. "A violation of the rules of court may result in the striking of the offending document, the waiver of the arguments made therein, the imposition of fines and/or the dismissal of the appeal. [Citations.]" (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768.) Alternatively, the reviewing court may "accept the statements of respondent's brief as to the evidence upon the subject. [Citation.]" (*Rosen v. E. C. Losch Co.* (1965) 234 Cal.App.2d 324, 327, fn. 1.) Finally, the court also has discretion to disregard lack of compliance. (Cal. Rules of Court, rule 14, subd. (e)(2)(C); *Stockinger v. Feather River Community College* (2003) 111 Cal.App.4th 1014, 1025.)

Though it is tempting to declare Bala's forfeiture in this case, we decline to do so. To be sure, Bala's fact statement is biased and not particularly helpful to our resolution of his contentions. Nevertheless, we are not persuaded that his rule violation is so egregious as to warrant forfeiture. We therefore exercise our discretion to disregard the deficiencies in his brief and to supplement any resulting gap or bias by relying on Sujata's thorough recitation of the material facts.

II. Standard of Review

In assessing the merits of Bala's appellate contentions, we begin with this well-established rule: "A judgment or order of a lower court is presumed to be correct on

appeal, and all intendments and presumptions are indulged in favor of its correctness. [Citations.]" (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.)

That presumption carries particular weight in this case, given the deferential abuse of discretion standard that governs our review here. (See, e.g., *Beam v. Bank of America* (1971) 6 Cal.3d 12, 25 [apportionment]; *In re Marriage of Nichols* (1994) 27 Cal.App.4th 661, 670 [determination of business goodwill value].) Speaking generally, "the appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered. [Citations.]" (*In re Marriage of Connolly* (1979) 23 Cal.3d 590, 598.)

To the extent that a trial court's exercise of discretion is based on the facts of the case, its decision will be upheld "as long as its determination is within the range of the evidence presented. [Citation.]" (*In re Marriage of Nichols, supra*, 27 Cal.App.4th at p. 670. See also, e.g., *In re Marriage of Dekker* (1993) 17 Cal.App.4th 842, 849.) Conversely, a court abuses its discretion if its findings are wholly unsupported, since a consideration of the evidence "is essential to a proper exercise of judicial discretion. [Citation.]" (*Johns v. City of Los Angeles* (1978) 78 Cal.App.3d 983, 998. See also, e.g., *Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 354-355; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)

With that deferential review standard in mind, we now turn to Bala's specific contentions. As noted above, we first describe and then apply the legal principles that govern Bala's claims.

III. Apportionment

A. General Principles

The doctrine of equitable apportionment comes into play when community effort increases the value of a separate property business. (See, e.g., *Pereira, supra,* 156 Cal. at pp. 7-8; *Beam v. Bank of America, supra,* 6 Cal.3d at p. 17.) The choice of whether to

apply the apportionment doctrine "is to be determined by the court from the circumstances appearing in the case . . . ." (*Estate of Gold* (1915) 170 Cal. 621, 623.)

1. Necessity for Apportionment

"Where community efforts increase the value of a separate property business, it becomes necessary to quantify the contributions of the separate capital and community effort to the increase. [Citation.]" (*In re Marriage of Dekker, supra,* 17 Cal.App.4th at p. 851.) "The community is entitled to the increase in profits attributable to community endeavor. [Citations.] Accordingly, courts must apportion profits derived from community effort to the community, and profits derived from separate capital are apportioned to separate property. [Citations.]" (*Id.* at pp. 851-852, fn. omitted.)

As our high court long ago recognized, "since income arising from the husband's skill, efforts and industry is community property, the community should receive a fair share of the profits which derive from the husband's devotion of more than minimal time and effort to the handling of his separate property. [Citations.]" (*Beam v. Bank of America, supra,* 6 Cal.3d at p. 17.) The need for apportionment between separate capital and community effort therefore "arises when, during marriage, more than minimal community effort is devoted to a separate property business. [Citations.]" (*In re Marriage of Dekker, supra,* 17 Cal.App.4th at p. 851, fn. omitted.)

2. Apportionment Formulas

"Over the years our courts have evolved two quite distinct, alternative approaches to allocating earnings between separate and community income in such cases." (*Beam v. Bank of America, supra,* 6 Cal.3d at p. 18. See also, e.g., *In re Marriage of Dekker, supra,* 17 Cal.App.4th at pp. 852-853; *In re Marriage of Zaentz* (1990) 218 Cal.App.3d 154, 166. See generally 11 Witkin, Summary of Cal. Law (9th ed. 1990) Community Property, § 89, p. 484; *id.* (2004 supp.), p. 336.)

One method, "commonly referred to as the *Pereira* approach," derives from the early case of that name. (*Beam v. Bank of America, supra,* 6 Cal.3d at p. 18*,* citing *Pereira, supra,* 156 Cal. at p. 7.) Under the *Pereira* approach, the court calculates a fair return on the spouse's separate property investment and allocates that amount as separate income; it awards the remainder to the community. (*Beam,* at p. 18.)

"The alternative apportionment approach . . . traces its derivation" to the *Van Camp* case. (*Beam v. Bank of America, supra,* 6 Cal.3d at p. 18, citing *Van Camp, supra,* 53 Cal.App. at pp. 27-28.) Under the *Van Camp* method, the court determines the reasonable value of the spouse's efforts devoted to the business and allocates that amount as community property; it treats the remainder as separate income derived from the separate property investment. (*Beam,* at p. 18.)

"The court has discretion to choose whichever formula will effect substantial justice." (*In re Marriage of Dekker, supra,* 17 Cal.App.4th at p. 853.)

3. Valuation

Once business growth is allocated between separate and community interests, those interests must be valued. Various methods are employed in valuing business interests. In California, one recognized valuation technique is the "capitalization of excess earnings" method. (See *In re Marriage of Rosen* (2002) 105 Cal.App.4th 808, 818-819 [goodwill value].) "The excess earnings method focuses on the earning power of the business to determine what rate of return the predicted earnings will yield in light of the risks involved to attain them. [Citation.]" (*Id*. at p. 818, internal quotation marks omitted. See also, e.g., *In re Marriage of Garrity and Bishton* (1986) 181 Cal.App.3d 675, 688, fn. 14 [describing the method].) Another valuation method that has been accepted in California applies a multiplier to net earnings or to accounts receivable. (See *In re Marriage of Foster* (1974) 42 Cal.App.3d 577, 580, 584.)

"The trial court possesses broad discretion to determine the value of community assets as long as its determination is within the range of the evidence presented.

[Citation.] The valuation of a particular asset is a factual question for the trial court, and its determination will be upheld on appeal if supported by substantial evidence in the record. [Citation.]" (*In re Marriage of Nichols*, *supra*, 27 Cal.App.4th at p. 670.)

B. Analysis

With those principles in mind, we turn to the decision challenged here.

1. Necessity for Apportionment

In its findings of fact, the trial court stated: "There is no dispute that the business . . . increased in value during the marriage. It is clear that Bala put much more than minimal efforts into the business. Thus some approach to equitable apportionment must be applied to the increase in value."

That conclusion finds clear support in the law. (See, e.g., *Beam v. Bank of America, supra,* 6 Cal.3d at p. 17; *In re Marriage of Dekker, supra,* 17 Cal.App.4th at p. 851.) It also find support in the evidence, including testimony that Bala works full-time at the firm and that he runs it jointly with his co-shareholder, Keith Meyer.

Bala nevertheless argues that it was inappropriate for the court to apportion the increase in the firm's value during marriage, because none of that growth derived from his community efforts. In essence, however, Bala frames his argument as a challenge to the trial court's choice of apportionment methods. We therefore address the argument in that context.

2. Choice of Apportionment Formulas

Bala's position is that it was error for the trial court to use the *Pereira* approach for even part of the apportionment – approximately one-third – as it did. He attempts to bolster that position with both factual and legal arguments. Those attempts are unavailing.

As factual support for his position, Bala cites evidence that his efforts on behalf of R&M did not contribute to its growth. We have little difficulty concluding that the cited evidence would support a judgment that went wholly in Bala's favor. Indeed, the trial

court itself acknowledged: "There are factors in this case which would minimize the influence of Bala's efforts on the growth and success of the business and thus lead the Court to a *Van Camp* approach and these factors are substantial." More to the point, however, there is substantial contrary evidence, which supports the court's determination that Bala's efforts were at least partially responsible for R&M's growth. For example, Bala is the only shareholder with a professional (civil) engineering license, which is required in order to sign off blueprints for governmental agencies. Additionally, Bala provides the firm with quality assurance, which is an important factor in obtaining repeat business. Bala simply – and inappropriately – disregards the evidence that does not advance his position. (See *In re Marriage of Zaentz*, *supra,* 218 Cal.App.3d at pp. 164-165.) That evidence supports the judge's choice of apportionment formula. (See, e.g., *Beam v. Bank of America, supra,* 6 Cal.3d at p. 20 [substantial evidence supports judge's implicit decision to employ *Pereira* rather than *Van Camp*].)

As legal support for his position, Bala relies on *Somps v. Somps* (1967) 250 Cal.App.2d 328. That reliance is misplaced. There, the Court of Appeal found "substantial evidence" that the entire increase in the value of the business "was attributed to a reasonable return upon the separate property of husband invested by him before marriage, and the faithful, loyal and effective services of his partner [] and the employees, together with the unprecedented population growth in Santa Clara County, causing an abnormal demand for residential subdivisions and other favorable business factors not related to husband's abilities or labors." (*Id.* at p. 334.) Based on that evidence, the appellate court *affirmed* the trial court's decision. Here, Bala asks us to *reverse*. The distinction is critical. True, the court in *Somps* effectively endorsed the use of the *Van Camp* approach, but it did so because substantial evidence supported that choice. As the court said: "There was substantial evidence to justify the court's finding that the husband and the community were fairly and adequately compensated for husband's services to the business." (*Id.* at p. 336.) In this case, equally substantial

evidence supports the trial court's decision to use a different approach. *Somps* thus does not aid Bala.

3. Determination of Value

As noted above, the court concluded that the community was entitled to $1,191,654, representing approximately one-third of the growth of Bala's interest in R&M during the marriage. In determining that value, the court adopted the calculations of Sujata's expert, Stephen Reiss, who employed different parameters from those used by Bala's expert, James Butera. The court explained the reasons for preferring Reiss's valuation, including the accountant's use of four years of earnings history rather than two, and his choice of a company-specific risk premium in connection with the capitalization rate. The court also explained its preference for using the firm's cash-basis tax returns, which were signed under penalty of perjury, rather that its accrual-basis financial statements, which were subject to some question.

Fairly characterized, the overall thrust of Bala's challenge to the court's valuation is that the calculations of his expert are right, while those of Sujata's expert are wrong. More specifically, Bala levels three particular criticisms at the court's determination. First, Bala asserts that its "justification for using inaccurate cash basis numbers is devoid of merit." He complains that using cash basis financial information eliminates consideration of accounts receivable and work in progress. Next, Bala quarrels with the court's adoption of a four-year time period for determining average annual earnings. He asserts that the selected period is not reasonably illustrative of current year earnings. Finally, Bala attacks the court's selection of Reiss's capitalization rate.

In response, Sujata asserts that Bala waived his contentions of computational errors, because he failed to raise them below by challenge to the statement of decision. As she points out, "to conserve judicial resources, any errors must be brought to the trial court's attention at the trial level while the error can still be expeditiously corrected.

[Citation.]" (*In re Marriage of Whealon* (1997) 53 Cal.App.4th 132, 144.) Sujata also counters Bala's arguments on the merits.

Even assuming Bala's challenges are preserved, they do not withstand scrutiny. Bala's overall argument "conveniently overlooks the principles of substantial evidence which govern on appeal. Whether husband is unpersuaded by the testimony of wife's experts (in favor of that of his own experts) is of no consequence. The trial court was within its discretion to rely on that testimony notwithstanding the existence of conflicting evidence." (*In re Marriage of Zaentz*, *supra,* 218 Cal.App.3d at pp. 164-165.) His three specific attacks are equally devoid of merit. First, there is no bright-line requiring the court to consider accounts receivable or work in progress in every case. (See *In re Marriage of Nichols*, *supra*, 27 Cal.App.4th at p. 670 [affirming the trial court's valuation, which was based on a stock purchase agreement that excluded accounts receivable and work in progress]. Compare *In re Marriage of Garrity and Bishton, supra,* 181 Cal.App.3d at pp. 688-689 [reversing the trial court, where its use of the excess earnings method failed to account for "properly aged accounts receivable [and] work in progress"].) For that reason, we reject Bala's contention that the trial court was compelled – as a matter of law – to employ the accrual method of accounting, which considers accounts receivable and work in progress, rather than the cash method, which does not. Second, there is no hard and fast rule concerning the choice of a time frame for averaging earnings. To the contrary, the trial court may employ "any legitimate method of evaluation that measures its present value by taking into account some past result." (*In re Marriage of Foster, supra,* 42 Cal.App.3d at p. 584. Cf., *In re Marriage of Rosen, supra,* 105 Cal.App.4th at p. 820 [where husband's net income was volatile, trial court erred in using a single, unrepresentative year].) Third, as to the choice of capitalization rate, various factors may enter into the determination of present value discount period, including "the type of business, its stability, and its earnings trend." (*In re Marriage of Garrity and Bishton, supra,* 181 Cal.App.3d at p. 688, fn. 14.) Thus, there is no bright-

line rule as to this element of the calculation either. In short, the court must decide valuation in each case based on its own particular facts. (*In re Marriage of Foster, supra,* 42 Cal.App.3d at p. 584.)

To sum up, where substantial evidence supports the trial court's choice of valuation method, its determination will be upheld on appeal. (*In re Marriage of Nichols*, *supra*, 27 Cal.App.4th at p. 670.) Substantial evidence supports that choice here.

CONCLUSION

In apportioning and valuing the community interest in this case, "the trial court diligently and conscientiously sorted through and evaluated a welter of complex and conflicting evidence in arriving at a patently just and equitable determination." (*In re Marriage of Zaentz*, *supra,* 218 Cal.App.3d at p. 167.)

DISPOSITION

The judgment is affirmed.

McAdams, J.

WE CONCUR:

Rushing, P.J.

Walsh, J.*

* Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.